SUPREME COURT, U.S.
FILED

09-761 OCT 13 2009

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IN THE

Supreme Court of the United States

Sylvester J. Hoffart, Individually
and as Guardian of the Person and
Estate of Louise T. Hoffart – PETITIONER

v.

Bob Herman, District Attorney, Washington
County, Oregon and Janelle Factora Wipper, Deputy
District Attorney, Washington County, Oregon –
RESPONDENTS

On Petition For A Writ Of Certiorari To
The United States Court of Appeals For The Fifth
Circuit

PETITION FOR WRIT OF CERTIORARI

Sylvester J. Hoffart, Individually and as Guardian
Of the Person and Estate of Louise T. Hoffart
565 County Road 2089
Liberty, Texas 77575
Ph. & Fax: 936-298-1741

QUESTION(S) PRESENTED

1. Why did Judge Hines inter into his recommendation words, a request and a claim that do not exist?

2. Under constitutional provisions, how can Judge Hines justify reading into his recommendation evidence which is false, thereby dismissing the Respondents and denying the Petitioners' right to seek justice in the United States Courts?

3. Why did Judge Crone set aside all factual evidence and dismiss all claims against the Respondents, based on Judge Hines' recommendation which contains non-existing evidence?

4. How can Judge Crone deny the Petitioners the right to seek justice in the courts based on false and non-existing evidence?

5. Why did Judge Jolly Benavides and Haynes set aside all factual evidence and claims against the Respondents for violating State and United States Laws and base their opinions on a non-existing claim?

6. Why did Judge Jolly Benavides and Hayes enter into their opinions a false and untrue statement (He contends that Wipper's declination to prosecute) to support their opinions?

7. How can four judges set aside a State of Oregon Elder Abuse Violation and United States Rights Violation by the Respondents, by basing their

dismissal and opinions on a claim and evidence that does not exist? IS THIS JUSTICE?

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

OPINIONS

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished two pages.

The opinion of the United States district court appears at Appendix B to the petition four pages.

Magistrate Judge's report and recommendation Appendix C to the petition four pages.

Magistrate Judge's order to moot docket #25 Appendix D to the petition one page.

JURISDICTION

For cases from federal courts:
The date on which the United States Court of Appeals decided my case was July 20, 2009.

No petition for rehearing was timely filed in my case.

The jurisdiction of the Court is invoked under 28 U.S.C. { 1254(1).

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CASES The Supreme Court of the United States
Rule 10 Book of Rules

STATUTES AND RULES
Constitutional and Civil Rights

CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED

Constitutional and Civil Rights to seek justice in United States Courts

STATEMENT OF THE CASE

Petitioners are being denied their rights to seek justice in the United States Courts.

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals For The Fifth Circuit entered a decision in conflict with a decision by a State Court of Last Resort.

A lower court has so far departed from the accepted and usual course of judicial proceedings. The United States Court of Appeals For Fifth Circuit sanctioned such a departure by the lower court. This gives rise or call for an exercise of this court's supervisory power.

EXHIBIT (1) State Court of Last Resort For The State of Oregon decision 7 pages.

EXHIBIT (2) Plaintiffs' objections 8 pages

CONCLUSION

Petitioners, Sylvester J. Hoffart and Louise T. Hoffart pray that this court finds that the lower courts refused them the right to seek justice under the United States Constitution based on a false claim, a request and false statements, that the Petitioners did not make and that do not exist.

The petitioners asks this court to exercise their supervisory power and give back the petitioners rights to seek justice which was wrongfully denied. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sylvester J. Hoffart, individually and as guardian of the Person and Estate of Louise T. Hoffart

Date: Dec. 17- 2009

Appendix A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-41357
Summary Calendar

SYLVESTER J HOFFART, Individually and as Guardian of the Person and Estate of Louise T Hoffart

Plaintiff – Appellant

v.

BOB HERMAN, District Attorney Washington County Oregon; JANELLE FACTORA WIPPER, Deputy District Attorney Washington County Oregon

Defendants – Appellees

Appeal from the United States District Court
For the Eastern District of Texas
USDC No. 1:08-CV-46

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*Pursuant to 5th CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR. R. 47.5.4.

Before JOLLY BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:

Sylvester Hoffart appeals the district court's dismissal of his claims against District Attorney Bob Herman and Deputy District Attorney Janelle Factora Wipper (the "Oregon Prosecutors"). We AFFIRM.

While Hoffart's complaint is sketchy, we can discern that he contends that he and Louise Hoffart were victimized by Hal Wiggins and other in violation of Oregon statutes. He complained to the Oregon authorities, but Wipper declined to prosecute for various reasons Hoffart contends are false. He contends that Wipper's declination to prosecute and alleged false statements she made, as well as her refusal to respond to further inquiries from Hoffart, constitute a further victimization of the Hoffarts in violation of Oregon law.

It is unclear why this action was brought in the Eastern District of Texas, and the Oregon Prosecutors challenged personal jurisdiction and venue. They also claimed absolute prosecutorial immunity. The district court dismissed the case and certified its judgment as a final judgment as to the Oregon Prosecutors under Federal Rule of Civil Procedure 54(b).

We need not reach the questions of personal jurisdiction and venue because we agree that Hoffart's claims – all stemming from the discretionary decision not to prosecute – are barred by absolute prosecutorial immunity under both federal and Oregon law. *Van de Kamp v. Goldstein,* 129 S. Ct. 855 (2009); *Imbler v. Pachtman,* 424 U.S. 409, 431 (1976); OR. REV. STAT. § 30.265(3)(c); *Tennyson v. Children's Servs. Div.,* 775 P.2d 1365 (Or. 1989). We also agree that the motion to disqualify the Oregon Attorney General as counsel in the district court was mooted by its dismissal of the case against these defendants.

Accordingly, the judgment of the district court is AFFIRMED.

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

SYLVESTER J. HOFFART,	§	
Individually and as Guardian	§	
Of the Person and the Estate of	§	
Louise T. Hoffart,	§	
	§	
Plaintiff,	§	
	§	
versus	§	CIVIL ACTION
	§	NO. 1:08-CV-46
HAL C. WIGGINS, ET AL.	§	
	§	
Defendants	§	

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

The court referred this matter to the Hon. Earl S. Hines, United States Magistrate Judge, for pretrial proceedings pursuant to General Order 05-05. The court has received and considered the report of the magistrate judge, who recommends that the court grant two defendants' motion to dismiss due to their prosecutorial immunity.

I. Background

Plaintiff Sylvester J. Hoffart, proceeding *pro se,* alleges that he has been swindled by relatives, defendants Hal and Joanne Wiggins. Plaintiff also sues Bob Herman and Janelle Factora Wipper, the District Attorney and Deputy District Attorney of Washington County, Oregon,

respectively, because they refused to criminally prosecute the Wiggins couple for their "theft" or wrongful conversion of plaintiff's money. On November 26, 2008, the magistrate judge filed his report recommending dismissal of Herman and Wipper based upon prosecutorial immunity.

On December 8, 2008, Plaintiff filed numerous objections to the magistrate judge's findings, conclusions, and analysis. This requires a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. 28 U.S.C. § 636(b)(1)(C).

II. Plaintiff's Objections

Plaintiff's objections quarrel with the precise words and phrases used by the magistrate judge when describing the nature of this case.[1] These objections amount to semantic quibbling that need no discussion.

Otherwise, plaintiff objects to the magistrate judge's conclusion that "[p]laintiff's only complaint against these defendants is that they exercised their prosecutorial discretion in such a way as to not charge Hal and Joanne Wiggins with crimes under Oregon law." Plaintiff insists that he alleged other claims against these defendants. Specifically, plaintiff asserts that he alleged a claim for making a false statement located in the document entitled "DA's Charging Decision," and that such false statements provide a basis for causes of action for: 1) violations of Oregon civil statutes Or. Rev. Stat. §§ 124.100-124.140; 2) conspiracy to commit elder abuse under Or. Rev. Stat. §§124.100-124.140; 3) abusing their positions as district attorneys; 4) failure to return phone

---

[1] Plaintiff objects to the words "what he perceives" and the word "transfer," which are found in the factual description of the magistrate judge's Report and Recommendation (Docket No 57)

calls or otherwise communicate with plaintiff; and 5) denying justice under the United States Constitution. In addition, Plaintiff makes unintelligible and unspecified references to the Federal Trade Commission and victims of identity theft, a 1924 case from the Supreme Court of Oregon pertaining to malicious prosecution,[2] to the state bar rules (pertaining to conflict of interest rules applicable to the Attorney General) and to "USC 1681(g) Victim's Rights."[3]

It is evident that each of plaintiff's complaints, objections or references have to do with the manner in which District Attorney Herman and Deputy District Attorney Wipper handled the criminal allegations lodged by Hoffart against the Wiggenses, and their official decision not to prosecute on the basis of the applicable statute of limitations. These were functions squarely within the sphere of a prosecutor's official duty, entitling them to immunity from civil suit and liability even if they mishandled or corruptly handled the matter. Accordingly, plaintiff's objections do not impugn the magistrate judge's findings, conclusions and recommendation.

III. Conclusion and Order

After conducting the required *de novo* review, the court concludes that the magistrate judge's findings, conclusions and analysis are correct. Accordingly, plaintiff's objections are **OVERRULED**, and the magistrate judge's report is hereby **ADOPTED**.

Final judgment will be entered separately.

---

2 Watts v. Gerking, 111 Or. 641 (1924).

3 Plaintiff makes several references to "USC 168," "USC 168(1)(g)" and "USC 1681(g)." It is unclear to the court to what statute he is referring

SIGNED at Beaumont, Texas, this 11th day of December, 2008.

sl MARCIA A. CRONE
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

SYLVESTER J. HOFFART, Individually and as Guardian Of the Person and the Estate of Louise T. Hoffart,	§	
Plaintiff,	§	
versus	§	CIVIL ACTION
	§	NO. 1:08-CV-46
HAL C. WIGGINS, ET AL.	§	
Defendants	§	

FINAL JUDGMENT

Having granted the defendants' motion to dismiss, it is therefore

ORDERED, ADJUDGED and **DECREED** that all claims asserted against Defendants Bob Herman and Janelle Factora Wipper, District Attorney and Deputy District Attorney of Washington County, Oregon, respectively, are **DISMISSED**, with prejudice, and with all parties to pay their own costs of court.

The court further determines that there is no just reason for delay in entering final judgment regarding this defendant. The court therefore directs that this be a partial final judgment as contemplated by Rule 54(b), Federal Rules of Civil Procedure.

SIGNED at Beaumont, Texas, this 11th day of December, 2008.

sl MARCIA A. CRONE
UNITED STATES
DISTRICT JUDGE

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIVISION OF TEXAS
BEAUMONT DIVISION

No. 1:08-CV-46

SYLVESTER J. HOFFART
Individually and as Guardian of the Person
And Estate of Louise T. Hoffart
Plaintiff

v.

HAL C. WIGGINS, JOANNE WIGGINS,
DWD CONTRACTORS, INC., BOB HERMAN,
And JANELLE FACTORA WIPPER
Defendants

Report and Recommendation
Of United States Magistrate Judge

This action is assigned to Hon. Marcia A. Crone, United States District Judge, who referred pretrial matters to the undersigned by order of reference entered January 24, 2008. This report addresses a pretrial motion to dismiss

filed by two defendants, Bob Herman and Janelle Factora Wipper.

Nature of Suit

Plaintiff Sylvester J. Hoffart, proceeding *pro se,* brings suit against several defendants for what he perceives and alleges to be "theft" of plaintiff's money. Considering plaintiff's numerous amended complaints as a whole, plaintiff – who is domiciled in Texas – alleges that he has been swindled by relatives domiciled in Oregon. Specifically, plaintiff alleges that these relatives – Hal and Joanne Wiggins – convinced him to transfer $202,643.00 to them for investment. Plaintiff alleges that the Wigginses promised to invest the funds in such a fashion as to earn a 8 1/2 percent interest annual return, to be paid in periodic installments, but instead they converted plaintiff's money to their own uses, and have failed and refused to return approximately half of the principal balance originally transferred.

Two of the remaining defendants, Bob Herman and Janelle Factora Wipper, are, respectively, the District Attorney and Deputy District Attorney of Washington County, Oregon. Plaintiff sues these defendants because they refused his request that they criminally prosecute the Wiggins couple for their "theft" or wrongful conversion of plaintiff's money.

The Herman and Wipper Motion to Dismiss

Defendants Herman and Wipper move for dismissal of plaintiff's claims against them on several grounds. These defendants argue that the plaintiff does not allege any grounds that will support federal subject-matter or personal jurisdiction, that plaintiff's chosen venue is improper, and that they enjoy absolute prosecutorial immunity from civil liability and suit.

The plaintiff opposes the motion, arguing *inter alia*, that defendants Herman and Wipper acted unreasonably in choosing not to prosecute the Wiggenses and are, therefore, not entitled to immunity.

Analysis

Immunity, like jurisdiction, is a threshold issue that courts must address first when the issue is raised. Assuming *arguendo* that there may be some basis for the court to exercise personal and subject-matter jurisdiction, and further assuming that venue in this district is proper, it is clear that Herman and Wipper are entitled to dismissal. It is axiomatic that in federal civil rights actions, state prosecutors enjoy absolute immunity from liability and suit from actions taken when acting in their role as advocates for the state, including actions taken before initiation of a prosecution and away from the courtroom. Buckley v. Fitzsimmons, 509 U.S. 259, 272-73 (1993); Chrissy F. ex rel. Medley v. Miss. Dep't of Pub. Welfare, 925 F.2d 844, 850 (5th Cir. 1991); Geter v. Fortenberry, 849 F.2d 1550, 1554-55 (5th Cir. 1988). Plaintiff's only complaint against these defendants is that they exercised their prosecutorial discretion in such a way as to not charge Hal and Joanne Wiggins with crimes under Oregon law. Such exercise of discretion clearly was taken in their official capacity of district attorney and deputy district attorney. Accordingly, they are absolutely immune, and plaintiff's claims against them fail to state a claim upon which relief may be granted. Florance v. Buchmeyer, 500 F. Supp. 2d 618, 640 (N.D. Tex. 2007).

Recommendation

The above defendants' motion to dismiss should be granted based on prosecutorial immunity.

Objections

Objections must be: (1) specific, (2) in writing, and

(3) served and filed within ten days after being served with a copy of this report. See 28 U.S.C.§ 636(b)(1); Fed. R. Civ. P. 1(a), 6(b), and 72(b).

A party's failure to object bars that party from: (1) entitlement to de novo review by a district judge of proposed findings and recommendations, see Rodriguez v. Bowen, 857 F.2d 275, 276-77 (5th Cir 1988), and (2) appellate review, except on grounds of plain error, of unobjected-to factual findings and legal conclusions accepted by the district court, see Douglas v. United Servs. Auto. Ass'n., 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED this 26 day of November, 2008.

sl Earl S. Hines
United States Magistrate Judge

Appendix D

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF TEXAS BEAUMONT DIVISION

No. 1:08-CV-46

SYLVESTER J. HOFFART,
Individually and as Guardian of the Person
And Estate of Louise T. Hoffart

Plaintiff

v.

HAL C. WIGGINS, JOANNE WIGGINS,
DWD CONTRACTORS, INC.

Defendants

Order

Pending before the court is plaintiff's motion to disqualify the Attorney General of the State of Oregon from representation of defendants Bob Hermann and Janelle Factora Wipper (respectively, District Attorney and Deputy District Attorney of Washing County, Oregon). On December 11, 2008, these defendants were dismissed from this action under the doctrine of prosecutorial immunity. See [Docket No. 68]. Accordingly, this motion

is moot. It is therefore

ORDERED that Plaintiff's "Motion to Disqualify Attorney" (Docket No. 25) is **DENIED** as moot.

SIGNED this 29 day of January, 2009.

sl Earl S. Hines
United States Magistrate Judge

Exhibit 1

Case 1:08-cv-00046-MAC-ESH Document 93-2
Filed 03/25/2009

FILED: March 19, 2009

IN THE COURT OF APPEALS OF THE STATE OF OREGON

SYLVESTER J. HOFFART and LOUISE T. HOFFART,
Plaintiffs-Appellants,

v.

HAL C. WIGGINS,
Defendant,

And

JOANNE WIGGINS and DWD CONTRACTORS, INC.,
Defendants-Respondents.

Washington County Circuit Court
C064483CV

A136936

Mark Gardner, Judge
Submitted on October 03, 2008
Appellants Sylvester J. Hoffart and Louise T. Hoffart filed the briefs *pro se*.
Craig O. West filed the brief for respondents.

Before Edmonds, Presiding Judge, and Wollheim, Judge, and Sercombe, Judge.

EDMONDS, P.J.

Reversed and remanded.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Appellants

[ ] No costs allowed

[X] Costs allowed, payable by Respondents

[ ] Costs allowed, to abide the outcome on remand, payable by

---

EDMONDS, P.J.

Plaintiffs appeal after the trial court granted summary judgment on their claim for financial abuse of a vulnerable person under ORS 124.110. We reverse and remand.

According to plaintiffs, they entrusted monies to defendants on different occasions beginning in 1982 so that defendant Hal Wiggins could invest on their behalf. The arrangement required defendants to pay a greater return of interest on the money than plaintiffs could obtain from other investment opportunities and required that the entire sum of money be returned to plaintiffs upon their request. In 2004, plaintiffs requested that their money be returned to them, but defendants allegedly refused to return all of the monies owed to them except for $71,500, which defendants paid back. Plaintiffs filed an action in circuit court against defendants to recover the remainder of what they claimed was owed to them and alleged that defendants had acted in bad faith in failing to return the entire amount of their investment, knowing of the right of plaintiffs' right to the return of their monies.

Defendants denied owing plaintiffs any additional

monies and moved for summary judgment on plaintiffs' claim, asserting that a claim under ORS 124.110(1) requires a wrongful taking.. At the hearing on the motion, plaintiffs agreed that when they transferred the money to defendants in 1982, it was a "legitimate transaction." Accordingly, the trial court, apparently adopting defendants' argument, ruled that summary judgment for defendants was proper on the ORS 124.110 claim because, in the court's view, although plaintiffs could assert a breach of contract claim for the improper retention of money, "the initial taking of the money has to be wrongful" for purposes of a financial abuse claim.[1]

On appeal, plaintiffs argue that the trial court erred because, although ORS 124.110(1) contemplates an action for the wrongful taking or appropriation of money from vulnerable persons, "it also prohibits the wrongful *retention* of money belonging to vulnerable persons. ORS 124.110[1](b)." (Emphasis in original.) Defendants respond that plaintiffs' brief "argues a "wrongful retention of money."*** As noted above, there was no "wrongful" conduct. The record confirms a legitimate business relationship between the Appellants and Defendant Hall Wiggins."

ORS 123.110 provides, in relevant part:

> "(1) An action may be brought under ORS 124.100 for financial abuse in the following circumstances:
>
> "(a) When a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person.

---

[1] Plaintiff's other claim based on a breach of contact theory was decided adversely to plaintiffs after a jury trial

"(b) When a vulnerable person requests that another person transfer to the vulnerable person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the vulnerable person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the vulnerable person when:

"(A) The ownership or control of the money or property was acquired in whole or part by the other person or someone acting in concert with the other person from the vulnerable person; and

"(B) The other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person."

We agree with defendants' argument that in an action based on ORS 124.1101)(a), any taking must be "wrongful" in order to be actionable. *See Church v. Woods*, 190 Or App 112, 117, 77P3d 1150 (2003) (statutory claim for financial abuse pursuant to ORS 124.110(1)(a) requires a wrongful taking). However, plaintiffs' claim in this case is based on the theory that defendants "acted in bad faith in refusing to return to Plaintiffs the principal amount of their investment and at all times knew of the right of the Plaintiffs to the return of their funds." Plaintiffs' allegations, read as a whole, implicate the provisions of ORS 123.11-(1)(b)(A) and (B). A claim is stated under those provisions when it is alleged that (1) the vulnerable person requests that another person transfer money to the vulnerable person; (2) the money requested to be transferred belongs to the vulnerable person; (3) the other person continues to hold the money or fails to take

reasonable steps to make the money readily available to the vulnerable person; (4) the money was acquired from the vulnerable person; and (5) "the other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money***transferred as requested or otherwise made available to the vulnerable person."

Defendants' argument that the initial taking must be wrongful for an action to exist under the statute would add an additional element that does not appear in the language of ORS 124.110(1)(b). Although ORS 123.110(1)(a) requires proof that the defendant "wrongfully takes or appropriates" money or property, ORS 123.110(1)(b) contains no such requirement. Moreover, to add such a requirement for a claim to be made under the statute would offend the admonition in ORS 174.010 that courts are not to insert into statutes language that has been omitted but shall simply ascertain and declare what is, in terms or in substance, contained therein. Clearly, had the legislature intended that a "wrongful taking" be an element for financial abuse based on the wrongful retention of a vulnerable person's money or property, it new how to impose that requirement and could have done so. Accordingly, we conclude that the trial court incorrectly ruled that plaintiffs were required to demonstrate a wrongful taking before they could prevail on their statutory claim.

Defendants also argue that plaintiffs produced no evidence to support their allegation that defendants acted in bad faith. According to defendants, the record reflects only a dispute over the amount of money and the need for an accounting of funds for the alleged breach of contract. However, at the summary judgment hearing and after Mr. Hoffart attempted to explain the circumstances concerning plaintiffs' demand for the return of the monies from defendants and defendants' subsequent refusal, the trial court told Hoffart, "I am not deciding today whether

or not Mr. Wiggins owes you or doesn't owe you money." Instead, it ruled, "[t}hat's a decision that is going to get made by probably a jury at a later point in time." As stated above, the record demonstrates that defendants returned some money to plaintiffs. Whether defendants acted in bad faith in retaining any additional monies is part of the issue of whether defendants owed monies to plaintiffs, an issue that the trial court ruled presented a jury question. To the extent that defendants seek to have summary judgment affirmed on appeal based on plaintiffs' failure to demonstrate that defendants acted in bad faith in refusing to return funds that they allegedly owed to plaintiffs, t is clear from the record that the trial court ruled that that issue was not a proper ground for summary judgment. We agree with the trial court.

Defendants make several other arguments in response to plaintiffs' claim of error, including that "[plaintiffs] failed to provide the necessary, admissible evidence to defeat [defendants'] Motion for Partial Summary Judgment" because plaintiffs' affidavit "was not based on his personal knowledge and it did not contain admissible evidence." The trial court did not rule on that basis. Plaintiffs appeared at the summary judgment hearing *pro se,* and it is unclear from the record whether the trial court would have permitted them to augment the record had defendants clearly raised the above issue in the trial court. For that reason, under *Outdoor Media Dimensions Inc. v. State of Oregon,* 331 Of 634, 659-60 20 P3d 180 (2001), we will not consider whether the trial court's ruling was correct, albeit for the wrong reason.

Finally, defendants point to the fact that the trial of plaintiffs' remaining breach of contract claim resulted in a defense verdict in favor of defendant Hal Wiggins. It may be that the doctrine of issue preclusion applies to plaintiffs' financial abuse claim, but that fact-bound issue was not before the trial court when it ruled on defendants' motion for summary judgment. Consequently, that

argument, if raised by defendants on remand, will have to be considered by the trial court at that time.

Reversed and remanded.

Exhibit 2

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DIVISION OF TEXAS,
BEAUMONT DIVISON

No. 1:08-CV-46

SYLVESTER J. HOFFART,
Individually and as Guardian of the Person
And Estate of Louise T. Hoffart

Plaintiffs

v.

HALL C. WIGGINS, JOANNE WIGGINS,
DWD CONTRACTORS, INC., BOB HERMAN,
And JANELLE FACTOR WIPPER

Defendants

OBJECTIONS TO REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE
IN RE: 1:08-CV-46, Document 57

Nature of Suit

Plaintiffs objects to the words "what he perceives". The Tigard Police Department, Washington County, Oregon filed theft and forgery charges against the suspect Hal C. Wiggins, because the evidence clearly shows that Hal C. Wiggins forged the Hoffarts' names and stole their

monies. The Hoffarts are the "victims". Attached Exhibit (B)

Plaintiffs object to the word "transfer". The monies were presented to the Wigginses in trust, to protect, safely keep and to earn 8 1/2% interest or more on the principal at all times, whether it was invested or not. All unpaid interest was to become part of the principal. Records now show that the total amount of the principal balance is $570,122.00. Most of all, at the request of the Plaintiffs, Hal C. Wiggins was to return any part or all of their money plus interest.

Objections To Analysis

Plaintiffs object to "Plaintiffs' only complaint against these Defendants is, that they exercised their prosecutorial discretion in such a way as to not charge Hal C. and Joanne Wiggins with crimes under Oregon law." This is not the complaint Plaintiffs have against the Defendants. The complaint is they exercised their prosecutorial duties in such a way as to personally attack the Plaintiffs by making a false claim against Mr. Hoffart.

The "Third Amended Claim" which is attached to this objection, pages 4, 5 & 6 show claims violations and claims for relief. Also, attached to this objection is Defendants Exhibit (1) "District Attorney's Charging Decision" showing true facts that Janelle Factora Wipper made a false claim against Plaintiff, Sylvester J. Hoffart, pro se.

On May 21, 2007, in the state of Oregon, the Wigginses took the deposition of Plaintiff, Sylvester J. Hoffart. The Wigginses presented their Exhibit #1, claiming that the District Attorney's Charging Decision clearly states that "Mr. Hoffart has already accepted $75,000.00". This clearly shows that the "District

Attorney's Charging Decision" was given to Hal C. Wiggins to use as a tool of defense against the Hoffarts' claim against the Wigginses.

When Janelle Factora Wipper knowingly and willingly made a false claim against Sylvester J. Hoffart, she did it wickedly, with full knowledge of its falsity. The doing of the act in law was neither justifiable nor excusable.

Bob Herman and Janelle Factora Wipper, personally attacked Plaintiff, Sylvester J. Hoffart, by using the "District Attorney's Charging Decision" to make a false money claim against ***(the victims)*** Mr. Hoffart. This unheard of act, denies them any right to immunity. No district attorney has the right to knowingly make false claims against any person.

Bob Herman and Janelle Factora Wipper stepped way out of line when they committed this wrongful act. Therefore, Plaintiffs objects to their dismissal from No. 1:08-CV-46. **111 ORE 641 "228 P. 135" 1924 ORE Lexis;** it is a proposition too monstrous to be debated in a court of justice for it must be obvious to any reasonable mind that this would place in the hand of an unscrupulous officer powers which are not consistent with good government nor the welfare of society. Doing of an act in a manner which early common-law judges term as false and malicious.

Herman and Wipper must be held accountable for their wrong doing. If their names are dismissed it will be putting them above the law. It would deny all rights for the victims/Hoffart. It would also deny the Plaintiffs' rights to justice under the constitution of the United States. Attached in support of this objection **Exhibit A: 111 ORE 641 228 P 135 1924 ORE LEXIS 171 (680), (681)**

CONCLUSION TO OBJECTIONS

Mr. Hoffart has never made a request for Herman or Wipper to criminally prosecute the Wigginses. This is false and untrue. Mr. Hoffart had no contact with Herman or Wipper during the Tigard Police's investigation. Herman and Wipper refused all telephone calls and mail from the Mr. Hoffart during and after the investigation.

Mr. Hoffart objects to "Refused his request that they criminally prosecute the Wiggins couple". This is untrue and false and Plaintiff Hoffart objects to it.

Herman and Wipper acted unreasonable when they made a legal document claiming that Mr. Hoffart had already accepted $75,000.00. They used their power as prosecutors to attack, in writing the Plaintiff Hoffart. At all times they knew this was a false claim. They presented this legal document to the Wigginses. The Wigginses then used this legal document in their defense to Hoffarts' claim against the Wigginses as Exhibit 1. Herman and Wipper in their official capacity of District Attorney and Deputy District Attorney conspired to do some unlawful deed, to plot together against Plaintiff Hoffart and to help the Wigginses in their defense.

Herman and Wipper choose to use their power as District Attorneys to attack the Plaintiff by making a false claim against Mr. Hoffart (Plaintiff) in a legal document. This wrongful act by Herman and Wipper was done in conspiracy with the Wigginses and was done wickedly with full knowledge of its falsity. The doing of the act in law was neither justifiable nor excusable. Herman and wiper must be compelled to answer for the consequences of their very wrongful act.

Yes, Plaintiff Hoffart does deeply object to the recommendation "Plaintiff's only complaint" is false. Mr. Hoffart has not filed any claim under prosecutorial discretion. There are claims listed in the "Third Amended Claim" against Herman and Wipper showing violation

claims, and claims for relief that may be granted. Attached are pages 4, 5 and 6 and Defendant Wiggins' Exhibit (1) and Exhibit (A) as Exhibits to Plaintiff Hoffarts' objections.

Because there are so many untrue and false errors in Report No. 1:08-CV-458, Document 57, Plaintiff Hoffart objects to the entire recommendation of prosecutorial immunity. The claim against Herman and Wipper does not address prosecutorial duties. The claim addresses the fact Herman and Wipper unreasonable made a false claim against Mr. Hoffart, Plaintiff on a legal document. Herman and Wipper then presented this document in conspiracy to the Wigginses, to use in the claims against them by the Plaintiff, Mr. Hoffarts.

Yes, the Plaintiff, Mr. Hoffart, pro se does deeply object to the recommendation to dismiss under prosecutorial immunity. Because of acts of wrongdoings, they cannot be dismissed under any type of immunity.

Finally it is obvious to any reasonable mind that the court did not make this report and recommendation on factual evidence and claims the truth.

To dismiss Herman and Wipper's names would deny all claims and motions filed by the Hoffarts and deny Hoffarts the right to a jury trial. This a proposition to monstrous to be debated in a court of justice. It must be presented to a jury.

The court has delayed the Hoffarts' "Emergency Leave of Court" for four months. No just cause was presented to Mr. Hoffart for this delay by the court. A "Second Emergency Leave of Court" was filed on December 4, 2008 by Mr. Hoffart. The court has the right by rules of law to freely grant a "Leave of Court" in the interest of justice. Mr. Hoffart has shown the court why their request for "Emergency Leave of Court" should be granted Immediately (NOW).

If the court has delayed this "Leave of Court" to

protect the Defendants Herman and Wipper's "Motion To Dismiss" or any other motions filed in this matter, it can only be construed that the court is using it's power to protect the Defendants, Herman, Wipper and Wiggins. This is not just cause nor is it in the best interest of justice. Mr. Hoffart requests that the court grant the "Emergency Leave of Court" immediately without delay.

Plaintiff, Sylvester J. Hoffart, pro se, request that the court deny the "Recommendation" because the report does not reflect evidence and truth in this matter.

Respectfully submitted
sl Sylvester J. Hoffart, pro se
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